

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JAMES OLIVER NORRIS,

Petitioner,

v.

CASE NO. 04-72176
HON. LAWRENCE P. ZATKOFF

BLAINE C. LAFLER,

Defendant.

**ORDER DENYING APPLICATION TO PROCEED *IN FORMA PAUPERIS*
AND DENYING MOTION FOR CERTIFICATE OF APPEALABILITY**

Petitioner James Oliver Norris has appealed the Court's Opinion and Judgment denying his habeas corpus petition. Currently pending before the Court are Petitioner's Application to Proceed *In Forma Pauperis* on Appeal [dkt 40] and Motion for Certificate of Appealability [dkt 41].

A certificate of appealability may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In order to make such a substantial showing, a petitioner must show that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Petitioner raised four primary issues in his petition for habeas corpus:

1. A series of actions and omissions by Petitioner's trial counsel violated Petitioner's Sixth Amendment right to the effective assistance of counsel;
2. Petitioner is entitled to habeas relief because he was denied his right to the effective assistance of counsel on his direct appeal;
3. Petitioner must be granted habeas corpus relief because the evidence was insufficient to allow a reasonable jury to find guilt beyond a reasonable doubt; and

4. The Michigan state courts denied Petitioner due process by (A) assuming that the pepper spray devise [sic] was capable of causing death or serious injury and (B) in failing to conduct a hearing with respect to the issue of ineffective assistance of trial and appellate counsel.

The Court has reviewed each issue as well as the supporting materials. For the reasons stated in the Court's March 20, 2008, Opinion and Order, a certificate of appealability is DENIED on each issue presented because Petitioner cannot make a substantial showing of a denial of a constitutional right on any of the issues. The Court will also deny Petitioner leave to appeal *in forma pauperis*, because the appeal would be frivolous. *Dell v. Straub*, 194 F. Supp. 2d 629, 659 (E.D. Mich. 2002).

Accordingly, IT IS ORDERED that no certificate of appealability shall issue in this matter.

IT IS FURTHER ORDERED that Petitioner's Application to Proceed *In Forma Pauperis* on Appeal is DENIED.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff

LAWRENCE P. ZATKOFF

UNITED STATES DISTRICT JUDGE

Dated: June 4, 2008

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on June 4, 2008.

s/Marie E. Verlinde

Case Manager

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